

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

LESHAWN NICKELSON,	:	NO. 1:12-CV-00363
	:	
Petitioner,	:	
	:	
vs.	:	<b>OPINION AND ORDER</b>
	:	
WARDEN, CHILLICOTHE	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 24), and Petitioner's Objections (doc. 26). For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation and TRANSFERS this matter to the Sixth Circuit Court of Appeals for a determination as to whether the district court may review it.

In his pro se Petition for a writ of habeas corpus, Petitioner challenges his incarceration based on his 2009 first and second degree felony drug trafficking convictions in the Lawrence County Common Pleas Court. Petitioner claims the trial court lacked jurisdiction over the matter due to unreasonable delay between his plea and sentencing (doc. 1).

The Magistrate Judge signaled to this Court that Petitioner's petition is attacking the same conviction and sentence that he previously unsuccessfully challenged in Case No. 1:11-CV-00334 (doc. 24). The Court has already ruled on the merits of

Petitioner's claims (Id.).

The Court has reviewed Petitioner's Objections (doc. 26), which again address the merits of his claim, but in no way address the Magistrate Judge's core conclusion. Petitioner has neither argued nor otherwise demonstrated that the instant Petition is not successive within the meaning of 28 U.S.C. § 2244(b), nor has Petitioner made a prima facie showing under 28 U.S.C. § 2244(b)(2) that the conditions allowing for review of new claims have been met. The Court therefore concludes that Magistrate Judge is correct in her assessment that the instant Petition is successive within the meaning of 28 U.S.C. § 2244(b) and that, therefore, this Court lacks jurisdiction to consider Petitioner's claims for relief absent authorization by the Sixth Circuit.

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in all respects (doc. 24) and TRANSFERS this matter pursuant to 28 U.S.C. § 1631 to the United States Court of Appeals for the Sixth Circuit for consideration as to whether the district court may review the Petition in accordance with 28 U.S.C. § 2244(b).

SO ORDERED.

Dated: January 15, 2013

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge